

LAWYER'S ADVISORY COMMITTEE
MINUTES
OCTOBER 14, 2003
TRENTON, NEW JERSEY

Chairperson Linda Schwimmer opened the meeting with Judges Gambardella, Ferguson, and Stern in attendance. Absentees included: Warren Martin, William Lyons, Joe Markowitz, Deborah Reperowitz, Daniel Stolz, and Leonard Wismur. She welcomed the new members, Jaimie Finberg, Scott Sherman, and Frank Velocci, and Jeanne Naughton, in an *ex Officio* capacity. Jeanne is the staff attorney for the clerk's office.

Committee Reports:

Local Chapter 11 Rules Committee - Chapter 11 Subcommittee Co-Chair Frank Vecchione reported that the Court's Chapter 11 Initiative is intended to send a positive message to the bar on a national level that New Jersey can accommodate Chapter 11 cases in an efficient and expeditious manner. Frank reported on the evolution of the Subcommittee's work which began in earnest with the reconstituting of the Subcommittee by Chief Judge Gambardella in November of 2002. The Subcommittee worked on a weekly and at times daily basis, for a period of four months which resulted in the Court's March 21, 2003 approval of the four General Orders governing respectively, complex case management, first day matters, interim fee applications and requests for financing. Frank reported that Judge Stern has utilized the complex case procedures as well as those governing first day matters with a good deal of satisfaction. It was further noted that the expectation built into the General Orders is that Chapter 11 cases and related pleadings will be electronically filed.

Frank Vecchione continued his report by indicating that the next step was to begin to garner publicity. Several Subcommittee members including Frank Vecchione, Jeanne Naughton, and Bruce Buechler have co-authored an article which the Subcommittee hopes to have published in legal journals. Bruce Buechler volunteered to follow up with Dan Stoltz regarding potential sources for publication of the article.

Several proposed and currently pending changes were discussed with respect to the General Orders, specifically, amendments to the first day orders guidelines as suggested by Judge Kathryn Ferguson for purposes of emphasis and clarification, as well as minor substantive changes suggested by Co-Chair Frank Vecchione with respect to the interim fee guidelines involving noticing, and intervals for fee submissions. The Court generated amendments will become final on October 31st unless otherwise indicated. The interim fee revisions will be studied by the Judges with e-mailed comments to circulate prior to November 14th, 2003.

Jeanne Naughton emphasized the importance of the issues being addressed through the mechanism of guidelines rather than rules so that judicial discretion is maintained on an

issue by issue and case by case basis.

Judge Stern raised the point that the “shopping list” of potential first day motions which are included in the Application for Expedited Consideration of First Day Matters could potentially pose a problem for the Court and that their proper use was a matter of education of the bar.

The suggestion was made that the Chapter 11 General Orders and guidelines would make a good break out session for the Bench Bar Symposium this year. Frank Vecchione recognized that as being a good idea.

Judge Gambardella recognized the moral support all of the Judges lent to the project as it progressed, and specifically recognized the importance of the work of Chapter 11 Subcommittee liaison to the Board of Judges, Judge Donald Steckroth.

Chapter 13 Rules Committee - Linda Schwimmer began the discussion concerning the proposed form of order for sales of real estate in Chapter 13 cases. She indicated that at the request of the Board of Judges, the Subcommittee reviewed numerous orders that debtors’ attorneys use to approve the sale of real estate under 11 USC section 363(b) in Chapter 13 cases. The Subcommittee focused on such issues as; the pros and cons of uniformity; notice requirements; payment to real estate agents and real estate attorneys through the order or by separate fee application; title insurance company’s concerns; avoidance of chilling sales; and the issues raised in *GE Capital Mortgage Services Inc. V. Privetera*, 346 N.J. Super 424 (App Div 2002).

The group as a whole then engaged in a lengthy discussion surrounding the details of the proposed form of order circulated prior to the meeting, including the Appellate Division case cited above, a comment from Bill Lyons of the IRS, question by Judge Stern regarding the differences in the “free and clear” language at para. 2 and 3 of the proposed form of order, and South Jersey closing procedures, per attorney Nona Ostrove.

Judge Kathryn Ferguson stated that paras. 4 and 6 of the proposed form of order may require a local rule change to fix the standard broker’s commission, and fees for closing agent/closing attorney. She indicated that such a rule amendment would cut down on a lot of broker and judge dissatisfaction.

Frank Vecchione discussed the effect of a judgment lien under NJ State law vis a vis the trustee’s position as a levying creditor.

The new form Chapter 13 Plan was discussed and requests for feedback were all positive. John Morton questioned whether the boilerplate provisions could be changed by attorneys when submitting their Chapter 13 plans. He went on to provide an example of where this was done by a

Trenton attorney. It was roundly agreed that the boilerplate language should not be changed, absent the most rare of circumstances, and even then it must be done on formal motion to amend the form Chapter 13 Plan. Judge Ferguson indicated that, given the volume of filings, the Judges cannot proofread each plan submitted and that the intention was clearly to utilize a form to minimize due process concerns regarding notice, content etc.

Judge Gambardella requested that the Clerk's Office highlight the fact that the plan language is not to be changed. Jeanne Naughton reported that a notice to e-filers had recently gone out to that effect, in response to the concerns raised by John Morton, but that the Court would highlight that directive again. The other members of the Subcommittee discussed whether one attorney was an isolated incident or whether the practice of alternation of the form was more widespread.

Linda Schwimmer announced the formulation of a new Chapter 13 Subcommittee to address Chapter 13 issues - John Morton was selected as Chairperson.

Clerk's Report: Scott Liddle and Jeanne Naughton reported that the Court is in the process of "involuntarily separating" 13 employees due to severe budget cuts from the AOUSC in Washington. Law firms considering hiring administrative/clerical staff are encouraged to share job announcements with the Court. In 2003-4, the clerk's office will be operating at approximately 30 positions below the judiciary's staffing formula level, and additional staffing reductions may be necessary, making more widespread use of electronic filing imperative.

Effective October 1, 2003, electronic filing was made mandatory for attorneys filing more than 10 primary documents in the 12-month period beginning October 1, 2003. They further reported that attorneys who are considered as regular filers were identified over the summer and advised to come in for training and certification. Beginning October 1, 2003, attorneys will be required to file a certification of non compliance with each conventionally filed primary document. If an attorney exceeds 10 certifications of non compliance in a 12 mos. period, they will be issued an order to show cause - attorneys must indicate that they have filed 10 or fewer pleadings, or that they have filed 10 or more and have called the court to register for training, or have been trained, but not yet certified.

The new privacy related rule and form changes were also discussed which go into effect on December 1, 2003. The Court will post detailed Notices to the Bar and Public in October and November of 2003, outlining *inter alia*, attorneys redaction responsibilities, as well as the local procedures for the submission of the debtor's Social Security number to the Court.

New Business: Reminder that the Bar Association dinner honoring Judges Burns and Ferguson will be held on October 29th.

District Court liaison Frank Vecchione reported that the District Court LAC met on the battleship USS New Jersey in Camden. The Court will implement electronic filing on a voluntary basis on November 3, 2003. He suggested that Chapter 11 filers will need to learn the District Court version. A major issue on the LAC's agenda is the impact on court reporters of the availability of transcripts on the Internet.

Roberta De Angelis reported that the US Trustee's office is looking into fraud, attorney abuse, abuses of petition preparers, serial filers, etc. and asked for input from attorneys.

The next Judge's Meeting is scheduled for December 11th.

The next LAC meeting is scheduled for January 14, 2004, location tba.